

WILLIAM D. EDWARDS,)
)
 Plaintiff,)
)
 v.) No. 4:11CV1383 TIA
)
 CITY OF WELLSTON, et al.,)
)
 Defendants.)

This matter is before the Court upon the motion of plaintiff for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the motion, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it “lacks an arguable basis in either law or fact.”

Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. Spencer v. Rhodes, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), aff'd 826 F.2d 1059 (4th Cir. 1987).

To determine whether an action fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. First, the Court must identify the allegations in the complaint that are not entitled to the assumption of truth. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950-51 (2009). These include “legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements.” Id. at 1949. Second, the Court must determine whether the complaint states a plausible claim for relief. Id. at 1950-51. This is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Id. at 1950. The plaintiff is required to plead facts that show more than the “mere possibility of misconduct.” Id. The Court must review the factual allegations in the complaint “to determine if they plausibly suggest an entitlement to relief.” Id. at 1951. When faced with alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff’s conclusion is the most plausible or whether it is more likely that no misconduct occurred. Id. at 1950, 51-52.

The Complaint

Plaintiff, a pretrial litigant in Missouri State Court, brings the instant action pursuant to 42 U.S.C. § 1983 alleging violations of his civil rights. Named as defendants are the City of Wellston, the Wellston Police Department, and three Wellston Police officers: Lawrence LaMontagne, David Callaway, and Nathaniel Tucker.

Plaintiff requests that this Court intervene in his state court criminal action, in which he has been charged with two separate felonies and a misdemeanor, including: resisting arrest/fleeing and creating a substantial risk of injury/death; assault/attempted assault on a police officer; and exceeding the posted speed limit by 20-25 mph. In his complaint, plaintiff details that he lead several Wellston Police Officers on a car chase in May 2011. Plaintiff claims that despite being chased by several police cars throughout the City of Wellston, St. Louis City and into Illinois, he was afraid to pull over. Plaintiff states that he believes this Court should invalidate his ongoing criminal case because it was improper for the City of Wellston officers to chase him outside their jurisdiction. He states, in a conclusory fashion, that the City of Wellston and the Police Department should be held liable for failing to teach their police officers not to engage in car chases outside their jurisdiction. Plaintiff also seeks invalidation of his

criminal case because he believes the officers have filed a false police report against him in an effort to justify their unlawful reach beyond their jurisdiction.

Plaintiff seeks monetary damages in addition to his request for injunctive relief.

Discussion

In Younger v. Harris, 401 U.S. 37, 46 (1971), the Supreme Court directed federal courts to abstain from hearing cases where "the action complained of constitutes the basis of an ongoing state judicial proceeding, the proceedings implicate important state interests, and an adequate opportunity exists in the state proceedings to raise constitutional challenges." Harmon v. City of Kansas City, Missouri, 197 F.3d 321, 325 (8th Cir. 1999); see also, Fuller v. Ulland, 76 F.3d 957, 959 (8th Cir. 1996).

Having carefully reviewed the case at bar, the Court concludes that the Younger criteria are satisfied and that abstention is warranted. Plaintiff states that there is an ongoing state judicial proceeding currently pending against him; plaintiff's allegations implicate important state interests; and an adequate opportunity exists in the state proceeding to raise constitutional challenges. Finding no "extraordinary circumstances" that would justify interfering with pending state judicial proceedings, the Court will dismiss the instant action, without prejudice. See Younger, 401 U.S. at 43-44.

Additionally, the Court notes that even if it were to entertain plaintiff's case under § 1983, it would also be subject to dismissal. The complaint is silent as to whether defendants are being sued in their official or individual capacities. Where a "complaint is silent about the capacity in which [plaintiff] is suing defendant, [a district court must] interpret the complaint as including only official-capacity claims." Egerdahl v. Hibbing Community College, 72 F.3d 615, 619 (8th Cir.1995); Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989). Naming a government official in his or her official capacity is the equivalent of naming the government entity that employs the official, in this case, the City of Wellston. To state a claim against a municipality or a government official in his or her official capacity, plaintiff must allege that a policy or custom of the municipality is responsible for the alleged constitutional violations. Monell v. Department of Social Services, 436 U.S. 658, 690-91 (1978). The instant complaint does not contain any allegations that a policy or custom of the City of Wellston was responsible for the alleged violations of plaintiff's constitutional rights.¹ As a result, the complaint fails to state a claim upon which relief can be granted.

Accordingly,

¹And plaintiff's claim against the Wellston Police Department is legally frivolous because the Police Department is not a suable entity. Ketchum v. City of West Memphis, Ark., 974 F.2d 81, 82 (8th Cir. 1992) (departments or subdivisions of local government are "not juridical entities suable as such."); Catlett v. Jefferson County, 299 F. Supp. 2d 967, 968-69 (E.D. Mo. 2004).

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

An appropriate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 22nd day of September, 2011.

/s/Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE